

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/523,804
Patent No. : 7,399,459
Applicant : LEE et al.
Filed : February 9, 2005
TC/A.U. : 1793
Examiner : Timothy C. Vanoy
Confirmation No. : 6175

Docket No. : 1751-373
Customer No. : 6449

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

COMMUNICATION REGARDING PATENT TERM ADJUSTMENT

Dear Sir:

This is to notify the Office of an apparent error with the patent term adjustment for the above mentioned application. Applicants received a decision for the Application for Patent Term Adjustment dated June 16, 2008 granting the request to correct the patent term adjustment to a total of 210 days. A copy of the decision is attached for your reference. However, the patent term adjustment was further reduced to 116 days as stated on the Issue Notification dated June 25, 2008.

Applicants believe that petition for patent term adjustment filed under 37 CFR § 1.705(b) on January 22, 2008 was erroneously entered twice by the U.S. Patent Office, one as a petition and the other as a miscellaneous incoming letter, in the transaction history. We believe the second entry listed as the miscellaneous incoming letter is what triggered the erroneous reduction in patent term. According to 37 C.F.R. § 1.704(9)(e), a submission of an application for patent term adjustment under 1.705(b) would not be considered a failure to engage in a reasonable effort to conclude prosecution and therefore patent term should not have been reduced.

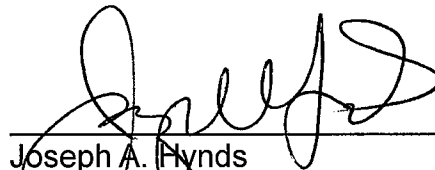
U.S. Serial No.: 10/523,804
Attorney Docket No.: 1751-373

Accordingly, it is requested that the Patent Office verify the patent term adjustment and issue a corrected notice to the undersigned.

Because this petition is necessitated by error on the part of the U.S. Patent and Trademark Office in failing to indicate the correct patent term adjustment of 210 days in PAIR, it is believed that no petition fee should be due. However, if any fee is due, please charge the cost thereof to Deposit Account No. 02-2135.

Respectfully submitted,

By

A handwritten signature in black ink, appearing to read "Joseph A. Hynds", is written over a horizontal line.

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JUN 16 2008

OFFICE OF PETITIONS

In re Application of :
Lee, et al. : DECISION ON APPLICATION
Application No. 10/523,804 : FOR PATENT TERM ADJUSTMENT
Filed: February 9, 2005 :
Atty. Dkt. No.: 1751-373 :

This is a decision on the "APPLICATION FOR PATENT TERM
ADJUSTMENT 37 CFR § 1.705(b)," filed January 22, 2008.

The application for patent term adjustment ("PTA") under 37 CFR
1.705(b) is hereby **GRANTED**.

The Determination of Patent Term Adjustment mailed November 20,
2007 indicated a PTA to date of 143 days. The instant
application for PTA was timely filed. Applicants argue that the
application is entitled to an additional adjustment of 67 days
in connection with the mailing of the non-final Office action on
May 8, 2007.

The correct PTA at the time of the allowance is 210 days.

Applicants do not contest the adjustment of 176 days or the
reduction of 33 days. Instead, applicants argue that the
application is entitled to an additional adjustment of 67 days
in connection with the mailing of the non-final Office action on
May 8, 2007.

Applicants arguments have been carefully reviewed and found
convincing. A review of the record reveals that a the Office
neglected to assess an adjustment of 67 days in accordance with
37 CFR 1.702(a)(2). The adjustment commenced March 3, 2007, the
day after the date that is four months after the date that
applicants' reply was filed, and ended May 8, 2007, the date
that the non-final Office action was mailed. See, 37 CFR
1.703(a)(2).

In view thereof, at the time of allowance, the application is
entitled to an adjustment of 210 days (Office delays totaling
243 days less applicants delays totaling 33 days).

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The required PTA application fee of \$200.00 has been charged to applicant's deposit account as authorized.

Applicants are further advised that the patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

The application file is being forwarded to the Office of Patent Publications for issuance of a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

Kery A. Fries

Kery Fries
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Adjusted PAIR Calculation

COPYDay : Thursday
Date: 6/12/2008**PALM INTRANET**

Time: 11:04:35

PTA Calculations for Application: 10/523804					
Application Filing Date:		02/09/2005	PTO Delay (PTO):		176
Issue Date of Patent:			Three Years:		0
Pre-Issue Petitions:		0	Applicant Delay (APPL):		33
Post-Issue Petitions:		0	Total PTA (days):		210
PTO Delay Adjustment:		67			
File Contents History					
Number	Date	Contents Description	PTO	APPL	START
44	06/12/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	67		
33	11/20/2007	MAIL NOTICE OF ALLOWANCE			
32	11/20/2007	MAIL EXAMINER'S AMENDMENT			
31	10/26/2007	ISSUE REVISION COMPLETED			
30	10/26/2007	DOCUMENT VERIFICATION			
29	10/26/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
28	10/19/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
27	10/22/2007	EXAMINER'S AMENDMENT COMMUNICATION			
26	10/22/2007	NOTICE OF ALLOWABILITY			
25	10/05/2007	CASE DOCKETED TO EXAMINER IN GAU			
24	09/21/2007	DATE FORWARDED TO EXAMINER			
23	09/10/2007	RESPONSE AFTER NON-FINAL ACTION		33	19
22	09/10/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
21	05/10/2007	ELECTRONIC REVIEW			
20	05/09/2007	EMAIL NOTIFICATION			
19	05/08/2007	MAIL NON-FINAL REJECTION			
18	05/03/2007	NON-FINAL REJECTION			
17	02/09/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
16	11/02/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
15.7	11/02/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
15	11/02/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

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14	10/02/2006	MAIL MISCELLANEOUS COMMUNICATION TO APPLICANT	176		-1
13	09/28/2006	MISCELLANEOUS ACTION WITH SSP			
12	09/14/2006	CASE DOCKETED TO EXAMINER IN GAU			
11	10/03/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
10	02/09/2005	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
9.7	02/09/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9	02/09/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	02/09/2005	PRELIMINARY AMENDMENT			
7	10/03/2005	CASE DOCKETED TO EXAMINER IN GAU			
6	09/29/2005	CLEARED BY OIPE CSR			
5	09/21/2005	CLEARED BY OIPE CSR			
4	02/09/2005	371 COMPLETION DATE			
3	09/14/2005	APPLICATION DISPATCHED FROM OIPE			
2	09/15/2005	NOTICE OF DO/EO ACCEPTANCE MAILED			
1	02/09/2005	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION**EXPLANATION OF PTE CALCULATION**

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